

### **REMARKS**

As of this response claims 1-42 are pending in this application and are subject to a restriction requirement. In particular, the claims are alleged to recite two distinct inventions, i.e., Groups I and II. As a result of the restriction/species election, claims 1-17, and 39-42 remain pending in the application. Claims 18-38 are withdrawn from consideration, without prejudice to refiling these claims.

#### **I. Provisional Election required under 37 C.F.R. §1.143**

An election of inventions is required in this response. Accordingly, applicant elects, with traverse, the claims of Group I, claims 1-30 and 39-40, and requests that the remaining claims 31-38, be withdrawn without prejudice.

An election of species is required in this response. Accordingly, applicant elects, with traverse, species of group A1, claims 1-17 and 39-40 directed to a transducer mounted to a board with a cover. Subject to the applicant's election with traverse, claims 18-38 are withdrawn from consideration.

#### **II. Traverse of Restriction Requirement**

The applicant respectfully traverses the restriction requirement with respect to claims 1-42. Pursuant to MPEP §803, a restriction requirement is proper only if: (1) the inventions are independent or distinct as claimed, and (2) there would be a serious burden on the examiner if the restriction is not required. Without addressing the issue of whether the claimed mems transducer and method of making a mems transducer are patentably distinct from each other, the applicant respectfully submits that a search and examination of the complete set of claims would not impose a serious burden on the examiner. The applicant submits that examination of a set of claims directed to the both the structure of the mems transducer and the method of making the very same structure would not place a serious burden upon the examiner if restriction is not required.

MPEP §802.01 states that the distinctness required for restriction means that the subjects "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER" (emphasis with capital letters in original). (See also MPEP §808.02, which states that where "related inventions are not patentably distinct as claimed, restriction ... is never proper." The Patent Office has also stated that "it is imperative the requirement should never be made where related inventions as claimed are not distinct." MPEP §806.)

These positions are necessary to entry of the restriction requirement by the Office and may be relied upon by the applicant during examination of this and continuing applications, unless the restriction requirement is withdrawn. If the examiner is not taking these positions, then it is submitted that the restriction requirement should be withdrawn upon reconsideration.

### III. Traverse of Election Requirement

The examiner alleges the claims of Group I recite four separate species: A1: a transducer unit mounted on a board with a cover; A2: a housing with non-conductive and conductive layers covering the transducer unit; A3: a transducer unit mounted on a board with a recess and a cover; and A4 a cover with an inner lining. All of the pending claims of Group I recite structure whether characterized as boards, covers, spacers, layers, members and the like forming a housing that includes shielding and/or protects a transducer. As noted above, the applicants elect the species of group A1, a transducer unit mounted on a board with cover. However, the applicant points out that structure characterized as a layer, member, wall, etc. may well form a cover. Moreover, the structure of a board and cover to form a housing may include additional characterizing structure, for example, and without limitation conductive and non-conductive layers that provide shielding. For example, claim 1 recites, among other things, a printed circuit board and a cover defining a portion of a housing and a transducer unit mounted within the housing. Claim 2-18, and 39-42 recite additional characteristics of the structure of the board and cover that comprise the housing.

Therefore, by election of the Species A1, the applicant elects the following claims of Group I, claims 1-18 and 39-42.

Applicants respectfully submit that claims 18-30, withdrawn as a result of this election, and allegedly of a separate species as identified by the examiner, are also appropriately included in the elected species and should be examined. That these claims recite specific structure without reciting a housing including a board and cover *per se*, does not create any additional burden on the examiner with respect to search and/or examination of the application. For example, each of these claims recites, among other things, structure that cooperates for enclosing, i.e., housing the transducer unit, thus shielding and/or protecting the transducer. It is clear the examiner in connection with the examination of claims 1-18 and 39-42 that recite a housing, comprising a cover and a substrate, is inherently searching and examining the invention of claims 18-30.

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#### IV. Conclusion

For these foregoing reasons, applicant respectfully requests an action on the merits of all the claims and a Notice of Allowance thereof. If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855 (30521/491A). Reconsideration and withdrawal of the restriction requirement is therefore respectfully requested.

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Respectfully submitted,

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